IN THE SUPREME COURT OF THE STATE OF DELAWARE

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| CITY OF WILMINGTON, | ) | |
| | ) | No. 449, 2005 |
| Defendant Below, | ) | |
| Appellant, | ) | Court Below: Superior Court of |
| | ) | the State of Delaware in and |
| v. | ) | for New Castle County |
| | ) | |
| MARIE SIKANDER and | ) | C.A. No. 04C-04-116 |
| ZOLFINKER SIKANDER, | ) | |
| wife and husband, | ) | |
| | ) | |
| Plaintiff Below, | ) | |
| Appellee. | ) | |

Submitted: March 8, 2006
Decided: March 17, 2006

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

***O R D E R***

This 17th day of March 2006, it appears to the Court that:

(1) On March 18, 2002, Marie Sikander, Plaintiff Below-Appellee, collided in an intersection with Officer Gerald Connor's Wilmington City Police car. Connor, responding to an emergency call, looked to his right, then entered the intersection against a red traffic control signal. As he looked to his left, Sikander's car struck his in the left rear quarter panel. The collision injured Sikander and she and her spouse brought a personal injury action against Connor and the City of Wilmington. The Sikanders claim that Connor negligently disobeyed the traffic signal, failed to keep a proper look out, and failed to "keep his vehicle under

control." Connor and the City of Wilmington filed motions for summary judgment. The trial judge concluded that 21 *Del. C.* § 4106(b) provided Connor with a privilege to disobey the traffic signal, and 21 Del. C. §4106(d)'s grant of immunity protected Connor from liability for his alleged ordinary negligence in failing to keep a proper look out and in failing to keep his vehicle under control. The trial judge granted Connor summary judgment. Further, the trial judge granted in part and denied in part the City's motion for summary judgment. The trial judge held that the City could avail itself of Connor's privilege to disobey the traffic signal, but the City remained subject to liability under 21 *Del. C.* § 4106(d) for Connor's other non-privileged negligent acts. We agree with the trial judge and affirm substantially for the same reasons he set forth in his decision dated July 28, 2005. We do find it necessary to comment upon some of the language in the trial judge's Opinion, however.[1]

(2) The trial judge stated:

> The AEVS [Authorized Emergency Vehicle Statute] was enacted after the Act [County and Municipal Tort Claims Act] and the General Assembly is presumed, therefore, to have known of the Act's existence when it enacted Section 4106(d). And the only harmonious interpretation of the two statutes reveals **that the City is exposed to liability for claims of simple negligence against one of its police officers in the operation of an emergency vehicle even though, in**

[1] We see no point to reiterating all of the facts of the case and discussing issues that are well articulated in the trial judge's Opinion. We only discuss the language of the trial judge's Opinion that could be misinterpreted.

> **the absence of the AEVS,[2] such claims would be limited to claims of gross or wanton negligence under the Act.**

This language can be read to mean that under the County and Municipal Tort Claims Act[3]("Act") the City is only liable for gross or wanton negligence, but the Authorized Emergency Vehicle Statute ("AEVS") extends the City's liability to ordinary negligence. If this reading is, in fact, the trial judge's interpretation, the Act subjects the City and the City's employee to liability for the employee's gross or wanton negligence and the AEVS subjects the City, but not Connor, to liability for Connor's ordinary negligence. We disagree with this interpretation.

(3) 10 *Del. C.* §4011(c) provides:

> An **employee** may be personally liable for acts or omissions causing property damage, bodily injury or death in instances in which the governmental entity is immune under this section, but only for those acts which were not within the scope of employment or which were performed with **wanton negligence** or willful and malicious intent.

Moreover, 10 Del. C. §4012(1) provides:

> A **governmental entity** shall be exposed to liability for its **negligent** acts or omissions causing property damage, bodily injury or death in the following instances:
>
> > (1) In its ownership, maintenance or use of any motor vehicle, special mobile equipment, trailer, aircraft or other machinery or equipment, whether mobile or stationary.

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2 10 *Del. C.* §4106.

3 *See* 10 *Del. C.* §§4010-4013.

Clearly these two sections of the Act indicate that the legislature intended that the City would be subject to liability for its employees' negligence and the employee would be subject to liability only for "wanton negligence or willful and malicious intent."[4]

(4) We now turn to the AEVS. The AEVS provides in relevant part:

> (a) The driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions herein stated.
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> (b) The driver of an authorized emergency vehicle may:
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> (1) Park or stand, irrespective of the provisions of this chapter;
> (2) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;
> (3) Exceed the speed limits so long as the driver does not endanger life or property;
> (4) Disregard regulations governing direction of movement or turning in specified directions.
>
> (c) The exemptions herein granted to an authorized emergency vehicle shall apply only when such vehicle is making use of audible or visual signals meeting the requirements of this title, except that an authorized emergency vehicle operated as a police vehicle need not make use of such signals.

[4] Significantly the two sections, §4011 and §4012, distinguish between wanton negligence and negligence indicating that the legislature knew the difference between the two. Therefore, one can only read the word "negligent" in §4012, referring to the City's liability, to mean ordinary negligence as opposed to "wanton" (or gross) negligence or "willful and malicious intent" (intentional acts). *See also Farris v. Moeckel*, 664 F. Supp. 881, 897 (D. Del. 1987)("Section 4012 exempts municipal entities from immunity only for *negligent* acts or omissions. As applied to governmental entities, the Tort Claims Act does not create an exemption from its blanket immunity provision for conduct that is intentional, willful, malicious, reckless or grossly negligent.").

> **(d) The driver of an emergency vehicle is not liable for any damage** to or loss of property or for any personal injury or death caused by the **negligent or wrongful act or omission of such driver except acts or omissions amounting to gross negligence or willful or wanton negligence** so long as the applicable portions of subsection (c) have been followed. **The owner of such emergency vehicle may not assert the defense of governmental immunity in any action on account of any damage to or loss of property or on account of personal injury or death caused by the negligent or wrongful act or omission of such driver or owner.**[5]

We agree that §4106(d) should and can be read consistently with 10 *Del.C.* §4012(1). §4106(d) specifically states that a driver of an emergency vehicle, in this case Connor, is not liable for his ordinary negligence, but remains liable for "gross negligence or wanton negligence." Moreover, §4106 (d) states that the owner of the vehicle, in this case the City, cannot assert the defense of government immunity for Connor's ordinary negligence. Put simply, the Act and the AEVS are consistent. Under both, the City is solely liable for Connor's ordinary negligence otherwise not privileged (failure to keep a proper lookout, e.g.), and Connor would be liable solely for his gross negligence or willful or wanton negligence, and acts performed with willful and malicious intent.[6] Therefore, as

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[5] 21 *Del. C.* §4106.

[6] The City argued that the two statutes could not be interpreted consistently because the AEVS was enacted after the Act, and the legislature is presumed to have been aware of the law. In other words, the City argues that the AEVS would be redundant if we interpret it to be consistent with the Act. This argument misses the mark. While the Act and the AEVS are consistent, and the legislature is presumed to have knowledge of the existing law, the AEVS is broader than the Act. The AEVS not only applies to governmental entities, like the Act, but also

the trial judge ultimately held, the City is not entitled to summary judgment on the Sikanders' claims that Connor's unprivileged ordinary negligence in operating the police car resulted in injury to them.[7]

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

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applies to private owners of emergency vehicles. The AEVS does, in subsection (d), add the generic term "wrongful act," which we understand to be a purported violation of Title 21 or the common law not rising to the level of "gross negligence, wanton negligence or willful and malicious intent."

[7] Both parties concede that the liability of the City will be limited to the City's insurance coverage under 18 *Del. C.* §6511. *See also Pauley v. Reinoehl*, 848 A.2d 561 (Del. 2003).